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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DAVID J. HOPKINS,

Plaintiff and Appellant,

v.

LOS ANGELES UNIFIED
SCHOOL DISTRICT,

Defendant and Respondent.

B287486

(Los Angeles County
Super. Ct. No. BC632045)

APPEAL from a judgment of the Superior Court of Los Angeles County, Maureen Duffy-Lewis, Judge. Reversed.

David Hopkins, in pro. per., for Plaintiff and Appellant.

David V. Greco, Associate General Counsel I, for Defendant and Respondent.

Appellant David Hopkins sued the Los Angeles Unified School District alleging age discrimination in violation of Title VII of the Civil Rights Act of 1964. The trial court sustained the District's demurrer without leave to amend, concluding that Hopkins had not exhausted his administrative remedies. We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

Hopkins was an employee of the Los Angeles Unified School District (the District). He was a 57-year-old African-American male with 27 years of experience teaching Social Studies. In August 2013, Clara Herran, the principal at Sun Valley High School where Hopkins taught, asked him to voluntarily enter the "substitute pool" and thereby waive his seniority rights. Hopkins declined; he was then involuntarily reassigned on October 7, 2013 to the District's Intensive Support and Innovation Center (Innovation Center), which he claims is widely referred to as "teacher jail."

On October 9, 2013, Herran sent a letter to Sun Valley High School staff, faculty, and students stating that an employee on campus had been the subject of a Los Angeles Police Department ("LAPD") investigation regarding alleged misconduct. The letter referred to an LAPD investigation of Hopkins based on allegedly false information Herran gave to the LAPD. Hopkins was never arrested or charged with any violation of the law. Hopkins was, however, placed on administrative leave pending the investigation and remained assigned to the Innovation Center until November 3, 2014, when

he was assigned to teach at Vista Middle School as a contract pay teacher. While at Vista Middle School, Hopkins was assigned only to clerical duties and substitute teaching positions despite there being vacant Social Studies teaching positions at the school. The District kept Hopkins in the substitute-teaching role and moved him from school to school.

On February 6, 2015, Hopkins filed a discrimination complaint with the Department of Fair Employment and Housing (“DFEH”) alleging that he had been discriminated against by the District. Using the form prepared by DFEH, Hopkins checked boxes in the “discrimination based on” section to indicate he was alleging discrimination based on race, sex, and age. In the section of the form calling for “particulars” of the allegations, Hopkins stated that beginning about March 2014, he had been subject to different terms and conditions of employment, including but not limited to being placed as a substitute teacher and being assigned to schools that are long distances from his home. He alleged that specific District employees were responsible for his placement and stated their names, ages, and races. Finally, he stated he believed he was being discriminated against because of “[his] race, Black, [and his] sex, Male,” and retaliated against in violation of Title VII of the Civil Rights Act of 1964, as amended.

On August 15, 2015, the District assigned Hopkins to Monroe High School as a displaced teacher. Hopkins resigned on

June 30, 2016.¹ On August 24, 2016, the DFEH issued Hopkins a Right to Sue Letter; he filed this action on August 29, 2016. His operative Third Amended Complaint alleged age discrimination based on his removal from his classroom and reassignment to the Innovation Center without receiving notice or the opportunity to contest any complaints against him.

The District filed a demurrer to Hopkins' Third Amended Complaint arguing that Hopkins had failed to exhaust his administrative remedies with DFEH because (1) he did not allege age discrimination in the DFEH charge and (2) he did not include his reassignment and constructive termination allegations in the DFEH filing. The District also asserted that Hopkins failed to state a cause of action because the alleged wrongdoing had not resulted in an adverse employment action.

The trial court heard and sustained the District's demurrer without leave to amend on November 13, 2017. The court noted that in Hopkins' DFEH charge, he claimed discrimination based on race and gender, but had failed to allege age discrimination. The court concluded that, as a result, Hopkins had failed to exhaust administrative remedies for age discrimination and the claim was barred. Hopkins timely appealed the dismissal of his case.

¹ Hopkins alleges he was constructively terminated due to the District's wrongful conduct.

DISCUSSION

I. Hopkins Adequately Alleged Age Discrimination at DFEH

“In evaluating a trial court’s order sustaining a demurrer, we review the complaint ‘de novo to determine whether it contains sufficient facts to state a cause of action.’ [Citation.]” (*Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1589.) We “assume the truth of all facts properly pleaded.” (*Heckart v. A-1 Self Storage, Inc.* (2018) 4 Cal.5th 749, 753.)

Under California’s Fair Employment and Housing Act, (Gov. Code, § 12940 et seq.) to pursue a civil action for discrimination an employee must exhaust his or her administrative remedies by filing a verified complaint with the DFEH and obtaining a right to sue letter. (Gov. Code, §§ 12960, 12965; *Martin v. Lockheed Missiles & Space Co.* (1994) 29 Cal.App.4th 1718, 1724.) If the administrative charge fails to specifically identify the alleged discrimination, the subsequent lawsuit will be barred. (*Hobson v. Raychem Corp.* (1999) 73 Cal.App.4th 614, 631, disapproved on another ground in *Colmenares v. Braemar Country Club, Inc.* (2003) 29 Cal.4th 1019.)

The trial court concluded that Hopkins’ age discrimination claim was barred because he had not provided adequate notice to DFEH that he was asserting a claim of discrimination based on age. Although Hopkins had used the form provided by DFEH and had checked the box for “age,” the trial court believed that Hopkins was also required to describe the basis for that claim in the “particulars” section of the DFEH form. We disagree.

The District relies on *Wills v. Superior Court* (2011) 195 Cal.App.4th 143. *Wills*, however, was a case in which the plaintiff checked the box alleging discrimination based on “denial of family/medical leave”, but then asserted claims based on mental disability; the plaintiff did not mention being retaliated or discriminated against for having a mental disability anywhere in the DFEH charge. (*Id.* at pp. 153-154.) The court found the plaintiff had not exhausted his administrative remedies. (*Id.* at pp. 153, 158.) Unlike this case, the plaintiff had not used the form provided by DFEH to indicate mental disability in any manner.

In contrast, Hopkins requested that DFEH investigate alleged employment misconduct by filling out the form created by DFEH for this purpose. Under the section titled “Discrimination based on (Check appropriate box(es).),” Hopkins checked the box next to “Age.” Additionally, in the “particulars” section of the form, Hopkins noted the ages of the LAUSD employees who he alleged were discriminating against him.

The purpose of the exhaustion requirement is to “ensure DFEH is provided the opportunity to resolve disputes and eliminate unlawful employment practices through conciliation.” (*Wills, supra*, 195 Cal.App.4th at p. 156.) The DFEH charge gives notice to the DFEH about the misconduct and “permit[s] investigation of the alleged discrimination.” (*Hobson, supra*, 73 Cal.App.4th at p. 631.) When an administrative body creates a form for complainants to use to effectively and efficiently give the administrative body notice to investigate misconduct, filling out

the form is sufficient notice to the administrative body. Hopkins successfully exhausted his administrative remedies.

II. Claims Not Considered by the Trial Court Do Not Support the Judgment

LAUSD asserts that there are additional grounds, not considered by the trial court, that support sustaining the demurrer. We review the trial court's ruling, not its reasoning, and may affirm a ruling on any ground supported by the record. (*Sviridov v. City of San Diego* (2017) 14 Cal.App.5th 514, 519; *Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 479.) While we do conduct a de novo review of an order sustaining a demurrer (*City of Morgan Hill v. Bay Area Air Quality Management Dist.* (2004) 118 Cal.App.4th 861, 869), we review the denial of leave to amend under an abuse of discretion standard. If a reasonable possibility that the pleading can be cured by amendment exists, we will reverse the trial court's ruling. (*Ellenberger v. Espinosa* (1994) 30 Cal.App.4th 943, 947.)

It is correct that we can affirm if our de novo review demonstrates that the complaint fails to state a cause of action. Here, however, the trial court, in making its determination that the demurrer should be sustained without leave to amend, failed to consider whether any of the other arguments now asserted by the District had any merit, or could be cured by the amendment Hopkins suggested he could make.

A. Inadequate Disclosure to DFEH

In one of the arguments on demurrer not considered by the trial court, the District asserted that the DFEH complaint did not allege reassignment or resignation, as alleged in the Third Amended Complaint, and did not contain any allegations of age

discrimination.² These issues were, however, adequately disclosed.

Claims not specifically included in a DFEH complaint, but that are “like or reasonably related to” the claims that were made, can properly be included in the court filings. (*Baker v. Children’s Hospital Medical Center* (1989) 209 Cal.App.3d 1057, 1064-1065 [incidents not specifically enumerated in DFEH complaint may be pursued so long as within the scope of an investigation which can reasonably be expected to follow the charge of discrimination].)

“A plaintiff suing under title VII is subject to an exhaustion requirement before commencing judicial action. [Citation.] Whether the plaintiff has met that requirement depends on an analysis of the ‘fit’ between the administrative charge and the lawsuit. [Citation.] The test for that ‘fit’ is whether the alleged discriminatory acts in the lawsuit are ‘like or reasonably related to’ the allegations contained in the administrative charge. [Citation.] ‘The absence of a perfect ‘fit’ between the administrative charge and the judicial complaint is therefore not fatal to judicial review if the policies of promoting conciliation and avoiding bypass of the administrative process have been served.’ [Citation.]” (*Yurick v. Superior Court* (1989) 209 Cal.App.3d 1116, 1121–1122.)

The District in part mischaracterizes the allegations of the Third Amended Complaint in making its inadequate disclosure

² As discussed above, the complaint to DFEH did adequately allege age discrimination.

argument. It asserts that the claim of discrimination related solely to the assignment to “teacher jail”; in fact, the complaint was not so limited, but alleged removal from the classroom and reassignment to other schools, as well as detention in teacher jail.

In addition, a review of the DFEH filing demonstrates that Hopkins described the change of his assignment from teacher to substitute teacher, his lack of assignment as a teacher, and changes in the terms and conditions of his employment. While not a perfect fit, his claims that he was discriminated against by being removed from his classroom are within the scope of an examination that would reasonably be expected by DFEH.

Had the trial court examined the claims, it could have concluded, as we do now, that this was sufficient notice to DFEH to support Hopkin’s Third Amended Complaint.

B. Adverse Employment Action

The District’s other ground for the demurrer that the trial court did not address was the failure to allege an adverse employment action, “such as termination, demotion, or denial of an available job.” In making this argument, the District focused on Hopkin’s allegation that he had been constructively discharged, but ignored the allegations in the Third Amended Complaint that, beginning in 2014, Hopkins was assigned to clerical and substitute duties at a school that had vacant positions that he was qualified to fill.

The District’s claims fail. First, while it is correct that the alleged constructive termination occurred after the DFEH filing, a plaintiff is not required to return to the DFEH to allege subsequent events related to his or her initial claims:

“To force an employee to return to the state agency every time he claims a new instance of discrimination in order to have the [EEOC] and the courts consider the subsequent incidents along with the original ones would erect a needless procedural barrier.” Where an employee’s allegations could be characterized as “a chain of related actions designed to punish him for offending his employer,” subsequent incidents can be treated together, as being reasonably related or growing out of the first incident. (*Oubichon v. North American Rockwell Corporation* (9th Cir. 1973) 482 F.2d 569, 571.) Here, the allegations of the complaint, which we accept as true in reviewing the sustaining of the demurrer, describe such a “chain of related actions.”

In addition, the Third Amended Complaint alleges adverse employment actions in addition to the constructive termination. Plaintiff alleges an attempt to deprive him of post-retirement benefits and to waive his seniority rights in favor of younger teachers. The reassignment from his permanent classroom between 2013 and 2015 involved not only a change in status but also a significant change in job responsibilities. These allegations can describe an adverse employment action. (*Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1054-1055 [“adverse treatment that is reasonably likely to impair reasonable employee’s job performance or prospects for advancement or promotions”]; *Simers v. Los Angeles Times Communications, LLC* (2018) 18 Cal.App.5th 1248, 1279 [“a job reassignment may be an adverse employment action when it entails materially adverse

consequences”; a change in job title and significant job responsibilities may permit a jury to find materially adverse consequences]; see also *Burlington Industries, Inc. v. Ellerth* (1998) 524 U.S. 742, 761, 118 S.Ct. 2257, 141 L.Ed.2d 633 [“[a] tangible employment action constitutes a significant change in employment status, such as . . . reassignment with significantly different responsibilities”].)

Thus, it is irrelevant whether the trial court, had it considered the arguments, would have concluded that Hopkins had been constructively terminated; he has sufficiently alleged adverse employment action related to the allegations of his complaint to the DFEH to proceed. The demurrer would properly have been overruled on this ground as well.

DISPOSITION

We reverse the judgment and remand for the trial court to overrule the demurrer to the Third Amended Complaint. Hopkins is to recover his costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.